

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

TUFAMERICA, INC.

Plaintiff,

v.

CODIGO MUSIC LLC, CODIGO  
PUBLISHING LLC, CODIGO  
ENTERTAINMENT LLC, SE MUSIC  
ACQUISITION LLC, SONY MUSIC  
ENTERTAINMENT, a division of SONY  
CORPORATION OF AMERICA and THE  
CLYDE OTIS MUSIC GROUP, INC.

Defendants.

Civil Action No. 1:11-Civ-1434-WHP

**ANSWER OF DEFENDANT THE CLYDE  
OTIS MUSIC GROUP, INC.**

**JURY DEMANDED**

The Clyde Otis Music Group, Inc, a corporation, in good standing, of the State of New Jersey with an address of PO Box 325, Englewood, New Jersey, 07631, by way of Answer to Plaintiff's complaint, says the following:

**BACKGROUND**

1. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

2. Defendant admits executing certain licenses and agreements relating to the Christina Aguilera recording entitled "Ain't No Other Man." Defendant neither admits nor denies the remaining allegations set forth in this paragraph of the Complaint because such allegations call for a legal conclusion. To the extent this paragraph sets forth allegations against Defendant that do not call for a legal conclusion, such allegations are denied. Insofar as the

allegations of this paragraph purport to characterize written documents, those writings speak for themselves and no responsive pleading is therefore required by Defendant and to the extent any wrongdoing is alleged against Defendant, it is denied.

3. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

4. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

5. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

6. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

7. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

8. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

9. Defendant admits it is a New Jersey corporation with a mailing address of PO Box 325, Englewood, NJ 07631. Defendant denies the remaining allegations of this paragraph of plaintiff's Complaint.

10. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint because such allegations call for a legal conclusion.

11. Defendant denies the allegations set forth in this paragraph of the Complaint.

12. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

13. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

14. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

15. Defendant denies the allegations set forth in this paragraph of plaintiff's complaint.

16. Defendant denies the allegations set forth in this paragraph of plaintiff's complaint.

17. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint because such allegations call for a legal conclusion. To the extent this paragraph sets forth allegations against Defendant that do not call for a legal conclusion, such allegations are denied.

18. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

19. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff's Complaint.

20. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

21. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

22. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

23. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

24. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

25. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

26. Defendant admits Slew published “Hippy Skippy Moon Strut” as performed by the Moon People. Defendant lacks sufficient information to either admit or deny the remaining allegations set forth in this paragraph of plaintiff’s Complaint.

27. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff’s Complaint.

28. Defendant lacks sufficient information to either admit or deny the allegations set forth in this paragraph of plaintiff’s Complaint.

29. Insofar as the allegations of this paragraph purport to characterize written documents, those writings speak for themselves and no responsive pleading is therefore required by Defendant and to the extent any wrongdoing is alleged against defendant, it is denied.

30. Defendant denies the allegations set forth in this paragraph of plaintiff's Complaint.

31. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

32. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant or plaintiff claims an entitlement to interests contrary to those of this Defendant, those allegations or assertions are denied.

33. Defendant denies the allegations set forth in this paragraph of plaintiff's Complaint.

#### FIRST CAUSE OF ACTION

34. Defendant repeats and re-alleges each and every response set forth in the preceding paragraphs of plaintiff's Complaint and make them a part hereof.

35. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint because such allegations call for a legal conclusion. To the extent this paragraph sets forth allegations against Defendant that do not call for a legal conclusion, such allegations are denied.

36. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint because such allegations call for a legal conclusion. To the extent this paragraph sets forth allegations against Defendant that do not call for a legal conclusion, such allegations are denied.

37. Defendant denies plaintiff has any authority or interests in musical compositions and/or sound recordings claimed by this Defendant.

38. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

39. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

40. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

41. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

## SECOND CAUSE OF ACTION

42. Defendant repeats and re-alleges each and every response set forth in the preceding paragraphs of plaintiff's Complaint and make them a part hereof.

43. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint because such allegations call for a legal conclusion. To the extent this paragraph sets forth allegations against Defendant that do not call for a legal conclusion, such allegations are denied.

44. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint because such allegations call for a legal conclusion. To the extent this paragraph

sets forth allegations against Defendant that do not call for a legal conclusion, such allegations are denied.

45. Defendant denies plaintiff has any authority or interests in musical compositions and/or sound recordings claimed by this Defendant.

46. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint because such allegations call for a legal conclusion. To the extent this paragraph sets forth allegations against Defendant that do not call for a legal conclusion, such allegations are denied.

47. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

48. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

49. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

### THIRD CAUSE OF ACTION

50. Defendant repeats and re-alleges each and every response set forth in the preceding paragraphs of plaintiff's Complaint and make them a part hereof.

51. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

52. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

53. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

54. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

#### FOURTH CAUSE OF ACTION

55. Defendant repeats and re-alleges each and every response set forth in the preceding paragraphs of plaintiff's Complaint and make them a part hereof.

56. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

57. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

58. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.



59. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

60. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

61. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

#### FIFTH CAUSE OF ACTION

62. Defendant repeats and re-alleges each and every response set forth in the preceding paragraphs of plaintiff's Complaint and make them a part hereof.

63. Defendant denies the allegations set forth in this paragraph of plaintiff's Complaint.

64. Defendant denies the allegations set forth in this paragraph of plaintiff's Complaint.

#### SIXTH CAUSE OF ACTION

65. Defendant repeats and re-alleges each and every response set forth in the preceding paragraphs of plaintiff's Complaint and make them a part hereof.

66. Defendant denies the allegations set forth in this paragraph of plaintiff's Complaint.

#### SEVENTH CAAUSE OF ACTION

67. Defendant repeats and re-alleges each and every response set forth in the preceding paragraphs of plaintiff's Complaint and make them a part hereof.

68. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

69. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

70. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

71. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

#### EIGHTH CAUSE OF ACTION

72. Defendant repeats and re-alleges each and every response set forth in the preceding paragraphs of plaintiff's Complaint and make them a part hereof.

73. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

74. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

75. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

76. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

#### NINTH CAUSE OF ACTION

77. Defendant repeats and re-alleges each and every response set forth in the preceding paragraphs of plaintiff's Complaint and make them a part hereof.

78. Defendant admits filing copyright registrations for Hippy Skippy effective December 17, 1969. Insofar as the allegations of this paragraph purport to characterize written documents, those writings speak for themselves and no responsive pleading is therefore required by defendant and to the extent any wrongdoing is alleged against defendant, it is denied.

79. Defendant denies the allegations set forth in this paragraph of plaintiff's Complaint.

80. Defendant denies plaintiff has any authority or interests in musical compositions and/or sound recordings claimed by this Defendant.

#### TENTH CAUSE OF ACTION

81. Defendant repeats and re-alleges each and every response set forth in the preceding paragraphs of plaintiff's Complaint and make them a part hereof.

82. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

83. Defendant neither admits nor denies the allegations set forth in this paragraph of the Complaint as same are not directed at the answering Defendant. To the extent any wrongdoing is alleged against this Defendant, it is denied.

84. Defendant denies plaintiff has any authority or interests in musical compositions and/or sound recordings claimed by this Defendant.

### **AFFIRMATIVE DEFENSES**

As and for separate affirmative defenses, Defendant The Clyde Otis Music Group, Inc. alleges:

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claims should be dismissed for failure to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of equitable estoppel.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by applicable law, rule, statute, or regulation.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged damages are the result of its own willful misconduct or negligence, and therefore defendant is not liable for any such damages.

**SIXTH AFFIRMATIVE DEFENSE**

At all times relevant to the subject matter of this lawsuit, The Clyde Otis Music Group, Inc. complied with all applicable statutory laws and regulations.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims against Defendant are barred by the doctrine of acquiescence.

**EIGHTH AFFIRMATIVE DEFENSE**

If Plaintiff sustained any damages, which Defendant denies, the damages were caused by Plaintiff's sole intentional acts or willful misconduct, and Plaintiff is barred from recovery.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of laches.

**TENTH AFFIRMATIVE DEFENSE**

None of the damages and/or costs sought by Plaintiff are properly recoverable in this action.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint is barred by the doctrines of collateral estoppel and res judicata.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred for failure to institute the action within the time periods set forth in applicable statutes of limitations.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The Complaint and claims asserted by Plaintiff are barred by Plaintiff's failure to name indispensable and necessary parties.

WHEREFORE, Defendant The Clyde Otis Music Group, Inc. demands judgment in its favor and prays that Court order the following relief:

1. Dismiss the complaint with prejudice;

2. Declare that Plaintiff has no rights in and to the copyrights for the musical composition and sound recording entitled “Hippy Skippy Moon Strut”;
3. Award Defendant its attorney’s fees pursuant to the Copyright Act;
4. Award Defendant its costs of suit; and,
5. Any and all other relief that the Court deems just and equitable.

**JURY DEMAND**

Defendant The Clyde Otis Music Group, Inc. hereby demands a jury for all issues triable by jury.

**Respectfully submitted,**

**DATED: May 15, 2011**

**LAW OFFICES OF MICHAEL D. STEGER, PC**

By: /s/ Michael D. Steger

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Attorney for Defendant The Clyde Otis Music Group, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of May 2011, I served a true and correct copy of Defendant The Clyde Otis Music Group, Inc.'s Answer to counsel for all parties by ECF.

/s/ Michael D. Steger  
Michael D. Steger